

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SYLVIA REESE,

Defendant-Appellant.

UNPUBLISHED

March 30, 1999

No. 202447

Detroit Recorder's Court

LC No. 95-012415

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROOSEVELT REESE,

Defendant-Appellant.

No. 202448

Detroit Recorder's Court

LC No. 95-012414

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REN CEN DEVELOPMENT SERVICES, INC.,

Defendant-Appellant.

No. 202449

Detroit Recorder's Court

LC No. 95-012413

Before: Talbot, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Following a ten-day bench trial, defendants in these consolidated cases were convicted of one count of false pretenses with intent to defraud over \$100, MCL 750.218; MSA 28.415. Defendants moved for judgment of acquittal notwithstanding the verdict. The trial court granted the motion in part, and modified the conviction to one count of the lesser included offense of attempted false pretenses, MCL 750.92; MSA 28.287. Defendants were sentenced to one year of probation and were required to make restitution in the amount of \$55,838. Defendants now appeal their convictions as of right. We reverse.

I

Defendants operate adult foster care homes in the Detroit metropolitan area under subcontracts with several state and local agencies. Following a predetermined formula, the agencies work with the homes to develop annual budgets. The relevant portion of the budget addresses the allocation of wages for direct care employees and administrators of the homes. According to the contract and the applicable guidelines, direct care workers are funded under Schedule A and administrators are funded under Schedule E.

Schedule A covers direct, hands-on care of the residents and supervisory services that directly benefit the residents. Witnesses testified that there is much confusion among care providers and auditors as to what services may properly be funded under Schedule A and what services are to be funded under Schedule E. One witness noted that auditors make subjective decisions regarding the two schedules based on nonexistent guidelines. Moreover, there are no definitions of “direct care” or of “administration” in the state’s contract or the accompanying guidelines. However, examples of what types of services may be funded under each schedule are included in the budget instructions.

In 1988, defendants filed their annual cost settlement listing Mrs. Reese as a Schedule A direct care worker. The wages were disallowed by the contracting agency, however, based on the auditors’ determination that Mrs. Reese was not providing direct, hands-on care. That decision was overruled on appeal, and it was determined that Mrs. Reese’s wages were properly funded under Schedule A.

In 1990, defendants sought clarification of what services were deemed supervisory and what were deemed administrative. In response, the agency mailed a copy of the exact guidelines that were causing confusion. Witnesses testified that no guidelines clarification has ever been issued by the state or local agencies.

In 1992, defendants’ homes were audited by the state. Using timecards provided by defendants for Mrs. Reese, the auditor found what he determined to be 1,750 duplicate hours. The auditor moved the hours from Schedule A to Schedule E because he determined that, on the days Mrs. Reese worked, (1) actual hours exceeded the budgeted hours, (2) there was an extra person over normal staffing patterns, (3) she was noted to be at two places at the same time, and (4) time records showed her being on staff at two places at the same time. The auditor further based his opinion on the fact that Mrs. Reese was never listed on the staff work schedule, she was a corporate officer, and she has signed documents as a provider in previous years.

Based on the auditor's findings, criminal charges were filed against defendants. In a five count information, defendants were charged with one count of false pretenses over \$100 for each of the three homes, MCL 750.218; MSA 28.415, conspiracy to defraud the state in violation of the Social Welfare Act, MCL 400.606; MSA 16.614(6), and conspiracy to commit false pretenses over \$100, MCL 750.157; MSA 28.354(1). The information was based on the factual premise that defendants had misrepresented Mrs. Reese as a direct care worker.

At trial, witnesses' testimony established that Mrs. Reese performed hands-on direct care on occasion and that she performed many supervisory duties that would properly be funded under Schedule A. Additionally, it was established that defendants did not bill for all of the time noted on Mrs. Reese's timecards, but, rather, paid her wages only up to the amount budgeted under Schedule A. Moreover, there was testimony that Mrs. Reese was never paid under Schedule E, which, under the terms of the contract, would have limited the amount of wages she could have received under Schedule A.

The trial court found that Mrs. Reese was both an administrator and a direct care worker. However, based on the timecards submitted for Mrs. Reese, the court entered a guilty verdict of one count of false pretense. On defendants' motion for judgment notwithstanding the verdict, the conviction was modified to one count of attempted false pretenses.

II

Defendants Sylvia Reese and Ren Cen Development argue that they were denied fair notice in violation of due process because the theory under which they were convicted differed from that stated in the information. We disagree.

The information cited the specific statute under which defendants were being charged and the state's auditor testified at the preliminary examination that he examined Mrs. Reese's timecards in determining that her hours had been improperly listed under Schedule A. We find that the information, together with the evidence presented at the preliminary examination, informed defendants of the basis of the charges against them in satisfaction of the constitutional requirement that criminal defendants be informed of the nature of the accusation. *People v Traugher*, 432 Mich 208, 216 n 11; 439 NW2d 231 (1989). Defendants have not shown that they suffered any prejudice as a result of the notice. *Id.* at 215.

III

Next, defendants argue that the prosecution failed to prove their guilt beyond a reasonable doubt. We agree.

In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998). In reviewing the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational

trier of fact could conclude that the elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). When deciding this issue, this Court should not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses. *Id.* at 514-515.

The crime of false pretenses consists of four elements: (1) a false representation regarding an existing fact; (2) knowledge by the defendant of the falsity of the representation; (3) use of the representation with intent to deceive; and (4) detrimental reliance on the false representation by the victim. *People v Reigle*, 223 Mich App 34, 37-38; 566 NW2d 21 (1997). To prove the lesser included crime of attempted false pretenses, the evidence must show (1) the specific intent to defraud and (2) an overt act going beyond mere preparation toward committing the crime, such as the false pretenses made. MCL 750.218; MSA 28.415; see *People v Covington*, 132 Mich App 79, 90; 346 NW2d 903 (1984) (Maher, J., concurring).

Even if the timecards at issue here were false, a falsehood, in and of itself, is insufficient to support an inference of intent to defraud. *People v McCoy*, 75 Mich App 164, 177; 254 NW2d 829 (1977). The evidence showed the confusion among providers and auditors concerning which services were to be funded under Schedule A and which were to be funded under Schedule E. The facts that defendants prevailed on their prior cost settlement appeal and that they sought clarification after that ruling demonstrates an effort to comply with the contract guidelines. The trial court's comments in its findings and its reduction of the conviction to attempted false pretenses further evidence a finding of no intent. Absent a specific intent to defraud, there can be no attempted false pretenses. *People v Stapf*, 155 Mich App 491, 494; 400 NW2d 656 (1986).

IV

Defendants also argue that the conviction was the result of a compromise or an impermissible attempt at leniency. Whether a trial court exceeds its authority is a question of law, which we review de novo. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997).

The Supreme Court has limited the power of compromise and leniency to juries, and has disapproved of those powers for a trial judge sitting without a jury. *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984). In the present case, the trial court stated on the record that, had it not been for the number of hours listed on Mrs. Reese's timecards, it would have reached a different verdict. The court also stated that it was shocked the matter had proceeded to criminal prosecution rather than being resolved amicably, noted what a fine operation defendants maintained, and offered to testify on defendants' behalf should any action be taken on defendants' license. The court further admonished the state for not having a clearer policy on what services were to be billed under Schedule A. These factors taken together lead us to conclude that the court reached a compromise verdict and exercised impermissible leniency requiring reversal.

V

Defendants argue that the trial court had to find them guilty on each of the three counts of false pretenses, or acquit on all counts. We disagree.

The alleged plan to defraud logically entailed a single scheme to defraud and not a separate scheme for each of the three homes. Had the evidence supported the verdict, it would not have been err for the court to find the defendants guilty of a single count of attempted false pretenses. See *Granger v Fruehauf Corp*, 429 Mich 1, 7; 412 NW2d 199 (1987).

VI

Finally, defendants argue that, because the contract and attendant guidelines were vague, they were denied the fair notice required by due process. US Const Am XIV; Const 1963, art 1, § 17. We disagree.

The void-for-vagueness doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property without due process of law. A statute that forbids an act in terms so vague that a person of common intelligence necessarily must guess at its meaning and may differ concerning its application violates due process. *People v Munn*, 198 Mich App 726, 727; 499 NW2d 459 (1993). Here, defendants do not challenge the penal statute under which they were convicted and, therefore, we find that their due process argument is misplaced.

Moreover, we find no prohibition against premising criminal prosecutions on breaches of administrative rules and regulations such as those at issue here. See, e.g., *Matthews v Blue Cross and Blue Shield of Michigan*, 456 Mich 365; 572 NW2d 603 (1998). Although the vague nature of the contract and guidelines was used in this case to disprove defendants' knowledge and intent to defraud, we reject defendants' theory that a vague administrative guideline bars prosecution for violation of a penal statute.

Reversed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Michael R. Smolenski